

Attachment to Independent Case Review Report
for CDRU # 5284 Case File # 95-266762.

Material Examiner Malone (RO)

Remarks:

After research it has been determined that the
NLET message dated 5-16-85 is missing/incomplete
from the case file at the time of review by the
Independent Scientist.

INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Cathryn Levine

Area(s) of Expertise: Hair + Fiber

Review commenced at: 10:55 AM (Time), 5/17/99 (Date)

File #: 95-266762

Laboratory #(s): 8504290035 SRQTKVY

Examiner(s) & Symbols

	Reviewed	Not Reviewed		Reviewed	Not Reviewed
<u>RQ</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<u>TK</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
<u>VY</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>

Materials Reviewed

Trial testimony transcript(s) of: Michael P. Malone

Testimony Date(s): Oct. 29, 1997 ^{cell} Pages: 956 - 898

Laboratory Report(s): do not have a date \rightarrow Rec. date from Ms. Beers
as 10/30/97

Laboratory Number: 50429003 SRQTKVY Date: 9/10/85

Laboratory Number: _____ Date: _____

Laboratory Number: _____ Date: _____

Examiner Bench Notes of: Technician - Malone

Laboratory Number: 50429003

Laboratory Number: _____

Laboratory Number: _____

Page 1 of 4

Initials: cell

Was any other material reviewed? Yes No

If yes, please identify and/or describe the material: _____

Results of Review

File #: 95-266762

Item or Specimen # Reviewed: Q1, Q3, Q4, Q8, Q9

Q1, Q23, Q26, Q31-Q33, Q36, Q37 K2, K3, K4, K6, K7

Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on
additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?
 Yes No Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?
 Yes No Unable to Determine

Review of Testimony:

Note: Numbered comments are required below or on
additional pages for any "No" or "Unable to Determine" Responses

Transcript not available.

See narrative

- 3) Testimony consistent with the laboratory report(s)? Yes No Unable to Determine
- 4) Testimony consistent with the bench notes? Yes No Unable to Determine
- 5) Testimony within bounds of examiner's expertise? Yes No Unable to Determine

Comments

(Set forth by above question #, if applicable.
Use "Additional Comments" Sheet, if needed)

Review of LAB report: (1) this file does not contain adequate scientific documentation to determine if appropriate tests were conducted. Ex. Abbreviations are used to describe characteristics of suspect's hair (K₆+K₇). Not all abbreviations can be interpreted by this examiner. No characteristics are listed for Q hairs. Reviewer has not been given hair policies, protocols, etc. from the time of this examination. While a hair comparison appears to have been conducted, it is not clear to this examiner if they were done in a scientifically acceptable manner. We have been told that no written policies, protocols exist as per Dr. Doug Dendrick (2) No - the results are not supported + adequately documented. In my opinion, an independent reviewer could NOT reach these ^{any} conclusion based on this documentation. - cont. on next pg.

Review completed at: 5:30 pm (Time), 5/17/99 (Date)

Total time spent conducting review (to nearest 1/4 hour): 5.5 hrs.

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of 9 pages. 5 handwritten pages + 4 pages peer review form

Catherine Levine 5/17/99
(Signature) (Date)

Additional Comments
(Set forth by question #, if applicable)

File #: 95-266762

(2) The report states the "some individual microscopic characteristics." The word 'individual' is confusing + may be misleading. Examples exist (see handwritten notes) where exculpatory evidence is not reported in case report. Hairs that may be exculpatory are identified in notes and testified to - but they are omitted from report. Reviewer cannot determine if this was laboratory policy at the time. In any event, crushing possible exculpatory evidence is problematic and possibly unethical.

The 3 questions - (#3) (4) - (5) - are not adequate questions to review the testimony in this case. One of the questions you should be asking is the testimony scientifically accurate? In this case Mr. Malone's ^{statement} ~~response~~ that you had at least 15 characteristics in other hairs (a comparison) is without a scientific basis. Mr. Malone also overstates the uniqueness of hair on several occasions (see cll notes, pg. 3). Also the statement regarding 2 cases in 10,000 individuals can be misleading - whether it is intentionally misleading ^{and} meant to be misleading I do not know. Examiner explains what the 2 in 10,000 means unambiguously but some attorneys may not pursue this area.

Some of the opinions expressed in this testimony are without scientific basis, i.e. 15 characteristics are necessary.

The testimony related to the uniqueness of hair is also without scientific basis.

For more info or detail regarding these issues - see 5 pages of handwritten notes by cll. These notes are attached.